Form XXIV (b). Neither of these sections has anything to do with a sale by the chargee.

There are no sections prescribing the Collector's duties on a sale by a chargee except those quoted above and it is quite clear that the Collector is not directed on the completion of the sale to do anything in particular with the register or duplicate copies of the Memorandum of Charge, and in the absence of any provision I have no doubt that he has no authority to cancel either copy. Presumably if he has authority to cancel the register copy he could also cancel the duplicate copy. It is the whole theory of registration of titles that the issue or duplicate copy of a document agrees with the register copy. I have already pointed out that a charge has a dual aspect. So far as the charge on the land is concerned, that has been got rid of so as to clear the title, but the personal covenant remains, and in fact section 147 contemplates that it shall remain after the remedies against the land have been exhausted. The duplicate charge having been handed to the Collector under section 142, it would be logical if the Collector endorsed upon it and upon the Register copy the amount by which the charge has been reduced as a result of the sale, but the Code does not so provide, and I conceive that in these circumstances all that the Collector can do after the completion of the sale is to return the duplicate charge to the chargee to enable him to sue upon the covenant.

The question whether the Collector, if satisfied that his cancellation of the Register copy of the Memorandum of Charge was wrong, could correct it depends upon the construction of section 230(e) of the Code. This sub-section, however, makes it clear that the Collector can only correct errors in documents of title and in memorials made thereon. The only general power of correction is given by section 230(b) and is ancillary to the right to call for various documents including a charge. This power is obviously not available when the document is already in the Collector's possession. The cancellation, therefore, can only be corrected under order of Court made in pursuance of section 240.

I hold, therefore, that the cancellation of the charge should never have been made, and I direct that such cancellation be corrected and that when corrected the duplicate memorandum of charge be returned to the chargee. I also hold that in the circumstances of the case the Collector had no power to correct it himself.

As regards costs it is provided in Rule 4, sub-rule 1 of 1932 that the costs of and incident to all proceedings in the Supreme Court shall be in the discretion of the Court. This is clearly a proceeding in the Supreme Court and the costs are, therefore, in the Court's discretion. It was argued that under section 237 (as amended by Enactment 28/31) there is provision for costs in the case of an appeal to the Court and that inferentially the Court has no power to give costs on a reference under section 238, but I think the general jurisdiction of the Court in such matters can only be ousted by express words, and it is to be observed that on a reference under section 37 of the Estate Duty Enactment of 1929, where the procedure is very similar to the procedure under section 238 of the Land Code, section 37(v) expressly negatives the Courts ordinary jurisdiction. I would, therefore, allow the respondent chargee his costs against the Collector.

Order accordingly.

[ORIGINAL CIVIL JURISDICTION]

MUDIE, J.

August, 31, 1933.

L. R. M. SUBRAMANIAM CHETTIAR. Plaintiff.

vs.

1. **S. K. KADER MASTAN & CO.**
2. **K. S. *alias* KUNA SEEYANA *alias* S. K. *alias* SEENA KAVANA KADER MASTAN**
3. **M. M. ZAINALABIDIN**
4. **N. M. SYED MOHAMED**
5. **S. K. MOHAMOODU**
6. **N. M. NOOR MOHAMED**
7. **M. S. A. ABDUL WAHAB *alias* S. A. ABDUL WAHAB.....Defendants.**

[PERAK CIVIL SUIT No. 100 OF 1933]

Partnership—Retiring partner's liability—Failure to withdraw share of capital—Failure to notify remaining partners of retirement—Liability unaffected by intention to abandon interest.

Mere abandonment and inactivity by a partner who has given up all hope of recovering his share does not affect his position in regard to liabilities in respect of the partnership business.

S. Seenivasagam for Plaintiff.

J. M. M. Lewis for 5th Defendant.

MUDIE, J.—This is a suit for $3,326.25 being principal and interest due on a promissory note executed by Kadermastan & Co., and Abdul Wahab in favour of the Plaintiff. There are seven defendants, but the issues now being tried are only between the Plaintiff and the fifth defendant, hereinafter referred to as the defendant.

The plaintiff alleges and the defendant denies that he was a partner in Kadermastan & Co. when the note was signed. The defendant admits that he became a partner in 1929. He says that he ceased to be a partner on the 31st March, 1931, and that the plaintiff had notice of it.

The defendant went to India in 1929, and there became involved in legal proceedings with S. K. Kadermastan, the principal partner in Kadermastan & Co. Ill-feeling arose between them. The defendant says that Kadermastan told him that he, defendant, had to leave the firm. On his way back to Malaya, defendant says he told the plaintiff, who was travelling in the same steamer, that he was going to leave the firm. He arrived in Ipoh in January, 1931. He says—"I told the people here what had happened in India." He took over the shop next door to Kadermastan & Co., and started a new business

there. He published a notice in the Times of Malaya of the 31st March, 1931, announcing that he had purchased the new business, but it was silent as to his withdrawal from the firm of Kadermastan & Co. He says that he told the plaintiff, his clerk, and others, that he had left the latter firm.

The plaintiff called one of the partners in Kadermastan & Co., who stated that the defendant had never retired from the firm. He produced the account books showing that the defendant had never withdrawn his share of the capital. The defendant admits that he left his share in the firm, but says that he had given up all hope of recovering it and abandoned it.

The defence is that when the defendant started a new business on the 31st March, 1931, he abandoned his interest in the old business, and was no longer a partner therein. It may be possible to abandon one's rights in partnership without giving notice, but in my opinion a partner cannot get rid of his liabilities in that way. As the defendant never gave notice to his partners of his withdrawal from the partnership, he is, in my opinion, still a partner. To hold otherwise would lead to all manner of difficulties. It is impossible, for example, to say on what date the partnership was dissolved. The defendant stated in his evidence that he ceased to be a partner in 1930, and that he was not a partner in the beginning of 1931; whereas he had sworn an affidavit on the 10th March, 1931, in Civil Suit 149/31 stating that "I am also a partner in the firm of S. K. Kader Mastan & Co., of No. 53, Treacher Street, Ipoh." A process of abandonment is so indefinite, that for a considerable period during the process, it would be impossible to say whether he was a partner or not. For these reasons I am of opinion that he did not cease to be a partner by mere abandonment and inactivity.

There will be judgment for the plaintiff with costs.

Judgment accordingly.

[ORIGINAL CIVIL JURISDICTION]

McFALL, J.

August, 18, 1933.

RE YAP TAI KONG.

EX PARTE A. V. P. M. R. M. RAMASAMY CHETTIAR.

[SELANGOR BANKRUPTCY No. 249 OF 1932]

Land Code, 1926, sections 135, 136—Appropriation of rents by chargee from the bankrupt's tenants—Bankruptcy Enactment, 1912, section 9.

A notice served on the bankrupt's tenants under section 136 of the Land Code, 1926, appropriates to the chargee the rents of the charged land already due and unpaid and the rents to become due. All sums paid for rents by tenants after service of that notice should go to the chargee, and all sums paid before service of that notice to the Official Assignee.

R. S. Jervoise, Official Assignee, in person.

McFALL, J.—This is an application to the Court under section 78 sub-section (iii) of the Bankruptcy Enactment, 1912, for a direction whether (a) the notice served on the bankrupt's tenants under section 136 of the Land Code, 1926, only takes effect as regards rents becoming due and payable to the chargee as and from the date of the chargee's notice or (b) whether or not it also affects arrears of rent due on the date of the notice and not paid until after the notice.

The facts are:—

On 24th November, 1932, a receiving order was made against Yap Tai Kong and he was adjudicated bankrupt.

Among the bankrupt's assets were certain lands with houses thereon which were charged to the Chartered Bank of India, Australia and China at Kuala Lumpur. The tenants of certain houses failed to pay their monthly rentals regularly and the rentals were in arrears.

On 20th March, 1933, the chargee Bank through its solicitors gave notice to the tenants as follows:—

> "Dear Sirs,
>
> We are instructed by the Chartered Bank of India, Australia and China to give you notice under section 136 of the Land Code 1926 that they hold a charge over the above premises and to request you to pay the rent to them in future instead of to The Official Assignee as representative of the estate of Yap Tai Kong a bankrupt.
>
> Our clients' receipt in writing for the rent will be a sufficient discharge for any rents received by them.
>
> Kindly acknowledge receipt of this letter.
>
> Yours faithfully,
> Sd. Bannon & Bailey."

At 20th March, 1933, one of these tenants, who occupied house No. 118 Sultan Street at a rental of $85/- a month payable in advance, owed $85.00 for the month of March and $240.00 arrears in respect of past months. He has paid up both sums to the Official Assignee.

On 25th May 1933, the chargee Bank through its solicitors gave notice to the tenant of 118, Sultan Street, requiring him to pay all rents in arrears (if any) and all future rents to Messrs. Walter Grenier and Company on chargee's behalf.

The law relevant appears to be as follows:—
Section 9 Bankruptcy Enactment, 1912.

> "(i) On the making of a receiving order the Official Assignee shall be thereby constituted receiver of the property of the debtor and thereafter, except as directed by this Enactment, no creditor to whom the debtor is indebted, in respect of any debt provable in bankruptcy, shall have any remedy against the property or person of the debtor in respect of the debt or shall commence any action or other legal proceeding in respect of such debt unless with the leave of the Court and on such terms as the Court may impose.